

UNITED STATES DISTRICT COURT
DISTRICT OF PUERTO RICO

1 JUAN CARLOS ARROYO-REYES,

2 Petitioner,

Civil No. 98-1079 (JAF)

4 v.

5 UNITED STATES OF AMERICA,

6 Respondent.
7
8

RECEIVED & FILED
01 DEC 19 AM 7:51
CLERK'S OFFICE
U.S. DISTRICT COURT
SAN JUAN, P.R.

9 OPINION AND ORDER

10 Petitioner, Juan Carlos Arroyo-Reyes, seeks a certificate of
11 appealability for our denial of his motion for reconsideration of
12 this court's rejection of his Section 2255 petition. We deny
13 Petitioner's motion.
14

15 On September 7, 1994, Petitioner pled guilty to violations of 21
16 U.S.C. § 846 (1994), conspiracy to distribute not less than fifty
17 grams of cocaine base, not less than five kilograms of cocaine, not
18 less than one kilogram of heroin, and some marihuana; and 18 U.S.C.
19 § 924(c)(1) (1996 & Supp. I 1999), knowingly using and carrying a
20 firearm in relation to a drug-trafficking crime. We sentenced
21 Petitioner to consecutive terms of 204 and 60 months of imprisonment,
22 and judgment was entered against him on February 3, 1995. On
23
24

25 CCA
26 AUSA - Gil
12/19/01
OOO

Civil No. 98-1079 (JAF)

2-

November 18, 1996, the First Circuit entered a judgment affirming
1 Petitioner's conviction.
2

3 On January 29, 1998, Petitioner filed a Section 2255 petition.
4 28 U.S.C. § 2255 (1994 & Supp. I 2001). Petitioner raised two
5 arguments. First, Petitioner argued that he was penalized as though
6 he had been carrying crack cocaine as opposed to the cocaine base he
7 alleges that he was actually carrying. Second, Petitioner contended
8 that he was improperly punished pursuant to 18 U.S.C. § 924(c)(1)
9 because he was erroneously deemed to have "used" a firearm, as that
10 term is interpreted under United States v. Bailey, 116 S. Ct. 501
11 (1995). This court rejected both of Petitioner's arguments, and we
12 dismissed his Section 2255 petition on May 11, 1998.
13
14

15 On June 8, 1998, Petitioner filed a motion for a certificate of
16 appealability of our denial of his Section 2255 petition. On that
17 same date, he also filed a notice of appeal of our May 11, 1998
18 decision. On July 14, 1998, we denied Petitioner's motion requesting
19 a certificate of appealability. On March 23, 1999 and on April 26,
20 1999, the First Circuit entered judgments against Petitioner, denying
21 his requests for a certificate of appealability.
22

23 On April 10, 2001, Petitioner filed a motion for reconsideration
24 of our judgment dismissing his Section 2255 petition pursuant to Rule
25 60(b) of the Federal Rules of Civil Procedure. FED. R. CIV. P. 60(b).
26

Civil No. 98-1079 (JAF)

3-

1 In his Rule 60(b) motion, Petitioner argued that this court had
2 improperly applied United States v. Bailey, 116 S. Ct. 501 (1995),
3 and had erroneously disregarded Bousley v. United States, 523 U.S.
4 614 (1998). We denied Petitioner's motion for reconsideration on
5 May 22, 2001.

6 On July 26, 2001, Petitioner filed an appeal from this court's
7 denial of his motion for reconsideration of our dismissal of his
8 Section 2255 petition.

9 On August 27, 2001, Petitioner filed a motion for a certificate
10 of appealability of our denial of his motion for reconsideration.
11 Petitioner claims that he is innocent of the firearms charge.

12 "Unless a circuit justice or judge issues a certificate of
13 appealability, an appeal may not be taken to the court of appeals
14 from . . . the final order in a proceeding under section 2255." 28
15 U.S.C. § 2253(c)(1)(B) (1994 & Supp. I 2001). An order denying a
16 habeas petitioner's Rule 60(b) motion for reconsideration is a final
17 order in a section 2255 proceeding requiring a certificate of
18 appealability before a petitioner can appeal to the First Circuit.
19 See Greenawalt v. Stewart, 105 F.3d 1268, 1272 (9th Cir. 1997). A
20 court may issue a certificate of appealability "only if the applicant
21 has made a substantial showing of the denial of a constitutional
22 right." 28 U.S.C. § 2253(c)(2).
23
24
25
26

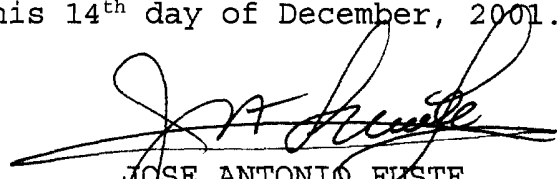
Civil No. 98-1079 (JAF)

4-

1 This court concludes that Petitioner has not made the showing
2 required to obtain a certificate of appealability. Therefore, we
3 **DENY** his motion.

4 **IT IS SO ORDERED.**

5 San Juan, Puerto Rico, this 14th day of December, 2001.

6
7 
8 JOSE ANTONIO FUSTE
9 U. S. District Judge
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26